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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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1998 Biennial Regulatory Review --)
Amendment of Parts 2.25 and 68 of the)
Commission's Rules to Further Streamline the)
Equipment Authorization Process for Radio)
Frequency Equipment, Modify the Equipment)
Authorization Process for Telephone Terminal)
Equipment, Implement Mutual Recognition)
Agreements and Begin Implementation of the)
Global Mobile Personal Communications by)
Satellite (GMPCS) Arrangements)

GEN. Docket No. 98-68

**COMMENTS OF
CONSTELLATION COMMUNICATIONS, INC.**

Constellation Communications, Inc. ("CCI"), by its attorneys, hereby files comments on the Commission's recent proposal to amend its equipment authorization rules as specified in the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

I. Introduction

CCI holds a license to construct, launch and operate a low-Earth orbit satellite system in the Mobile Satellite Service Above 1 GHz ("MSS Above 1 GHz" or "Big LEO" service).² Earlier this month, CCI informed the Commission that it had commenced construction of its Big LEO satellite system through the execution of a satellite construction contract with Orbital Sciences Corporation.³

¹ Notice of Proposed Rulemaking, GEN. Docket No. 98-68 (May 18, 1998) ("NPRM").

² See *Constellation Communications, Inc.*, DA 97-1366, *Order and Authorization*, released July 1, 1997.

³ See Letter from Robert A. Mazer to Ms. Magalie Roman Salas, dated July 2, 1998.

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The CCI system will operate Earth-to-space service links in the 1610-1621.35 MHz band. Although the NPRM addresses a number of proposed rule changes concerning equipment approvals, CCI's comments are reserved to the Commission's proposed rules to begin implementation of the Global Mobile Personal Communications by Satellite ("GMPCS") Arrangements.

The Commission's NPRM proposes to amend the Commission's equipment authorization procedures to, among other things, implement the GMPCS Memorandum of Understanding ("MoU") Arrangements that were concluded this year by GMPCS operators, service providers and manufacturers. The GMPCS MoU Arrangements are being disseminated through the International Telecommunications Union and are designed to facilitate the transportation of GMPCS terminal equipment across national boundaries without risk of confiscation or the imposition of import duties or tariffs. New LEO systems, such as the CCI system, are inherently global and will not be able to serve the public unless users will have the ability to use ground equipment on a global basis. To promote this goal, the Arrangements create a framework for licensing, type approval and marking of GMPCS mobile terminals in addition to specific arrangements for sharing of traffic data and customs recommendations. Individual administrations, however, must implement the Arrangements on a domestic level.

The Commission's NPRM proposes interim rules to permit the use of GMPCS equipment in the United States pending adoption of final rules implementing the overall Arrangements. The Commission proposes to allow GMPCS terminal equipment to be certified using the existing sub-part J equipment certification procedures as an interim measure until final GMPCS rules are promulgated.

II. Adoption of the NTIA Proposal

The Commission states that it will certify GMPCS equipment on an interim basis, provided that the equipment meets the standards contained in Parts 1, 2, and 25 of its rules and the “stringent, out-of-band” emission standard recently proposed by NTIA.⁴ The Commission also notes in the NPRM that it plans to initiate a rulemaking to consider the NTIA proposed standard.⁵ CCI submits that the Commission’s requirement that GMPCS terminals meet a standard proposed by a third party that has yet to be vetted in the Commission’s rulemaking process, or through any other standard making body, is highly inappropriate and contrary to Commission practice. The Commission’s proposal is particularly inappropriate in view of the opposition to the NTIA Proposal that is reflected in comments CCI, MCHI and AMSC filed with the Commission.⁶ Indeed, as CCI argued in detail in its comments regarding the NTIA proposal, the NTIA proposal does not even contain sufficient justification to warrant the initiation of a rulemaking.

By requiring GMPCS terminal equipment manufacturers to meet NTIA’s proposed standard, the Commission would be prejudging the many issues raised by parties opposed to that proposed standard. Such a decision would be fundamentally unfair to the parties to the negotiated rulemaking which led to the Commission’s promulgation of the standard contained in Section 25.213(b).⁷ Moreover, such a requirement would thwart the parties’ justified expectation that the Commission would apply its existing rule unless and until it was amended through the rulemaking process, and

⁴ See NPRM at ¶¶ 40, 43.

⁵ NPRM at ¶ 44.

⁶ See e.g. Comments of Constellation Communications, Inc., in RM No. 9165, dated December 8, 1997.

⁷ 47 C.F.R. § 25.213(b).

thus would be contrary to due process. Finally, by adopting the proposed NTIA standard in the interim GMPCS equipment certification rules without input from interested parties, the Commission would undermine its stated plan to evaluate the merits of that proposal through a rulemaking, and risks the costly prospect that mobile earth terminals ("METS") transmitters will be required to conform to the NTIA standard for a temporary period, only to have to readjust to a different standard once the Commission ultimately reaches a decision in that rulemaking.

The NTIA proposal is inconsistent with the standard for out-of-band emissions that currently exists in Section 25.213(c) of the Commission's Rules, which was the result of a difficult compromise made during the Big LEO Negotiated Rulemaking proceedings in CC Docket 92-166 to insure that GPS was provided with adequate out-of-band emission protection. Section 25.213(c) requires METS in the 1610-1626.5 MHz band to limit their out-of-band emissions to a maximum EIRP of -70dB(W/MHz) within the 1574.397 - 1576.443 MHz band. There was no agreement to extend this limit outside the specific GPS signal bandwidth. Given the delicate nature of the compromise reached in the Negotiated Rulemaking proceeding, any extension of the -70 dB(W/MHz) out-of-band emission limit must be based on a balancing of the yet to be proven requirements of the aviation community against the economic costs that such limits have on MET transmitters.

III. Procedural Issues

CCI is pleased that the Commission's NPRM recognizes the need to implement a domestic regulatory structure to carry out the GMPCS MoU Arrangements. The proposed interim rules will benefit the public interest by providing a uniform system for licensing terminal equipment for in-orbit or imminently operational satellite systems. Consequently, CCI supports the basic components

of the Commission's proposal. Nonetheless, CCI encourages the Commission not to let the adoption of these interim rules serve as a justification for diverting resources away from implementing final rules in this area. The Commission's adoption of rules to permit equipment certification of GMPCS equipment on an interim basis should not serve to cause a delay in the Commission's promulgation of final rules implementing the GMPCS Arrangements, and CCI urges the Commission to move expeditiously to adopt a further rulemaking to comprehensively implement the GMPCS Arrangements.

In addition to voicing its support for the Commission's basic proposal concerning certification of GMPCS equipment, CCI submits these comments to encourage the Commission to clarify certain elements of its proposal. First, CCI believes that it is extremely important for the Commission's GMPCS rules to codify the Commission's position that any GMPCS terminal equipment certifications recognized under these interim rules will not be "grandfathered" when final GMPCS rules are adopted in the future. The rules adopted in this proceeding should require that any equipment certifications for GMPCS terminals be conditioned on the manufacturer bearing the burden of any additional requirements that may be imposed in final rules comprehensively implementing the GMPCS Arrangements. Moreover, CCI recommends that the Commission review all certifications granted under these interim rules at the time final rules are put in place.

Second, CCI believes the Commission should clarify the impact these interim rules will have on existing blanket licenses previously issued for GMPCS equipment.⁸ In order to ensure that all GMPCS equipment is subject to the same regulatory regime, CCI suggests that existing blanket licenses be phased out and replaced with interim equipment certifications pursuant to these GMPCS

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See NPRM at ¶ 42.

rules. Moreover, CCI recommends the Commission clarify in these rules blanket licensing will not be required in addition to these GMPCS equipment certification procedures. It would place unnecessary regulatory burdens on the Commission and the public to require both blanket licensing and equipment certification to implement the GMPCS Arrangements.

Third, the NPRM should address the impact of future intersystem coordination on these equipment certification procedures. To the extent that incumbent systems seek equipment certification based on the current environment for a particular service, the equipment may not be able to operate without causing interference to commercial or governmental users that are authorized to provide service in the future. For example, all Big LEO licensees are obligated to participate in post-licensing coordination. This coordination will be particularly important among the systems sharing spectrum. Any equipment certified under these interim rules has the potential to be incompatible with the sharing environment that will exist after the incumbent Big LEO systems coordinate with CCI and other licensees. Any rules adopted in this proceeding should affirmatively require that any equipment certified under the interim procedures will require re-certification in the event the interference environment is changed as a result of future intrasystem coordination.

Constellation Communications, Inc. thanks the Commission for the opportunity to present its view on the implementation of GMPCS rules and requests that the Commission accept the comments presented herein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert A. Mazer", written over the printed name.

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